

Plaintiff consents to the application of Kansas law. Doc. #35, at 3. Therefore, the Court will apply Kansas substantive law to all counts. Defendants' motion is granted.

B. Motion to Strike Punitive Damages

Defendants move to strike Plaintiff's claims for punitive damages. Doc. #32. In response, Plaintiff abandons her punitive damages claim against the Estate. Doc. #35, at 3. Therefore, Defendants' motion to strike Plaintiff's punitive damages claim is granted against the Estate.

Defendants argue the state court previously dismissed Plaintiff's request for punitive damages, and therefore, res judicata bars Plaintiff from seeking the same relief in this case. Plaintiff concedes the state court dismissed Plaintiff's claims for punitive damages. Doc. #35-4. But Plaintiff argues the state court only dismissed punitive damages "against the Estate, not Coughlin." Doc. #35, at 3. Plaintiff points to Defendant's state court motion which only sought dismissal of punitive damages against the Estate. *Id.*; Doc. #35-3.

Defendants' state court motion was entitled, in relevant part, "Defendant Estate of Patrick Michael Hennessey and Defendant Bette Coughlin, as Executor of the Estate of Patrick Michael Hennessey." Doc. #35-3. Therein, Defendants' argued "punitive damages cannot be imposed against a deceased tortfeasor." *Id.* The motion did not seek dismissal of Plaintiff's request for punitive damages against Coughlin individually. Therefore, whether Plaintiff could seek punitive damages against Coughlin individually was not before the state court. Accordingly, Defendants' motion to strike Plaintiff's claims for punitive damages against Coughlin is denied.

III. CONCLUSION

For the foregoing reasons, Defendants' motion to declare Kansas law applies is granted, and Defendants' motion to strike Plaintiff's claims for punitive damages is granted against the Estate and denied against Coughlin.

IT IS SO ORDERED.

DATE: November 8, 2019

/s/ Ortrie D. Smith
ORTRIE D. SMITH, SENIOR JUDGE
UNITED STATES DISTRICT COURT